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SECOND REGULAR SESSION
SIXTIETH LEGISLATURE

**FORTY-FOURTH LEGISLATIVE DAY
TUESDAY, FEBRUARY 23, 2010**

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 10:30 a.m.

Roll call showed all members present except Senator Schroeder, absent and excused.

Prayer was offered by Chaplain Montie Ralstin.

The Pledge of Allegiance was led by Angela Call, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of February 22, 2010, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

Senator Schroeder was recorded present at this order of business.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SCR 122

BY RESOURCES AND ENVIRONMENT COMMITTEE A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE DEPARTMENT OF FISH AND GAME RELATING TO RULES GOVERNING FISH.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Department of Fish and Game relating to Rules Governing Fish is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixtieth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 13.01.11, Rules Governing Fish, Section 201, Fishing Methods and Gear, Subsection 11, Use of Hands, only, relating to Rules of the Department of Fish and Game, adopted as a pending rule under Docket Number 13-0111-0901, be, and the same is hereby rejected and declared null, void and of no force and effect.

SCR 123

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE VETERINARY MEDICINE BOARD RELATING TO RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Veterinary Medicine Board relating to Rules of the State of Idaho Board of Veterinary Medicine is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixtieth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 46.01.01, Rules of the State of Idaho Board of Veterinary Medicine, Rules of the Veterinary Medicine Board, adopted as a pending rule under Docket Number 46-0101-0901, the entire rulemaking docket, be, and the same is hereby rejected and declared null, void and of no force and effect.

SCR 124

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE DEPARTMENT OF AGRICULTURE RELATING TO RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING RETAIL RAW MILK.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Department of Agriculture relating to Rules of the Department of Agriculture Governing Retail Raw Milk are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixtieth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 02.04.13, Rules of the Department of Agriculture Governing Retail Raw Milk, Rules of the Department of Agriculture, adopted as pending rules under

Docket Number 02-0413-0901 (Chapter Repeal) and Docket Number 02-0413-0902 (Chapter Rewrite), the entire rulemaking dockets, be, and the same are hereby rejected and declared null, void and of no force and effect.

SJM 105
BY STATE AFFAIRS COMMITTEE
 A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the Second Regular Session of the Sixtieth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the federal Equal Access to Justice Act (EAJA), as enacted in 1980, together with other attorney fee shifting statutes, were enacted to restrain overzealous regulators and reimburse parties subjected to unreasonable government action by providing equal access to courts. These federal statutes were designed to reimburse attorney's fees so that a party that otherwise would not be able to afford litigation against the government, could have an opportunity to recover attorney's fees if the federal government's litigation position was not substantially justified; and

WHEREAS, certain nonprofit environmental groups have abused the original intent of many of these fee shifting statutes, finding procedural flaws in agency actions, suing the government and receiving millions of federal taxpayer dollars in attorney's fees for settling or winning such cases. Receipt of fees in this manner allows groups to continue litigation against the government. Ranchers and those who are the subject of these lawsuits must pay their own attorney's fees in order to intervene and participate in litigation. The Equal Access to Justice Act is also inequitable in that it permits any nonprofit to receive reimbursement regardless of its net worth, while limiting for-profit reimbursement to only those entities with a net worth of less than \$7 million; and

WHEREAS, the Equal Access to Justice Act provides that the Chairman of the Administrative Conference of the United States shall report annually to Congress as to the amount of fees and other expenses awarded during the preceding fiscal year, along with the number, nature and amount of awards, claims involved in controversy and any other relevant information which might aid Congress in evaluating the scope and impact of awards. In 1995, however, the Conference was no longer funded. Although reauthorized in 2008, the Conference remains without a chairman and staff. The lack of reporting has acted to eliminate the transparency of the program which is vital to maintaining public trust in taxpayer expenditures as well as assuring that taxpayer funds are properly expended; and

WHEREAS, the United States economy is in severe distress with the federal government exceeding over \$1 trillion in deficit spending in the previous fiscal year. Congress needs to look closely at every expenditure of taxpayer dollars before it is spent and scrutinize expenditures to ensure they are necessary and constitutional.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixtieth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the State of Idaho hereby urges the President of the United States and the United States Congress to undertake an immediate and

thorough review of federal expenditures under the Equal Access to Justice Act and other fee shifting statutes.

BE IT FURTHER RESOLVED that the Idaho Legislature strongly supports the passage of federal legislation that restores the mandatory reporting requirements under the Equal Access to Justice Act, and other federal fee shifting statutes, and makes all data associated with federal awards under the Act publicly available, including the name and location of recipients of awards, the lawsuit for which the awards were made, the amount of attorney's fees paid and the per hour rate in which they were calculated and the names of the attorneys who were compensated.

BE IT FURTHER RESOLVED that the Idaho Legislature requests the relevant committees of Congress conduct thorough oversight hearings on the use and/or abuse of Equal Access to Justice Act and other fee shifting statutes, and hear testimony about potential reforms to the Act that would make it more transparent, equitable and accountable to the taxpayers that fund it.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

[SCR 122](#), [SCR 123](#), [SCR 124](#), and [SJM 105](#) were introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

February 22, 2010

The JUDICIARY AND RULES Committee reports that [S 1375](#), [S 1376](#), [S 1377](#), [S 1378](#), [S 1379](#), [S 1380](#), [S 1381](#), [S 1382](#), [SCR 120](#), and [SCR 121](#) have been correctly printed.

DARRINGTON, Chairman

[S 1375](#), [S 1376](#), [S 1377](#), [S 1378](#), and [S 1379](#) were referred to the State Affairs Committee.

[S 1380](#) was referred to the Commerce and Human Resources Committee.

[S 1381](#) was referred to the Local Government and Taxation Committee.

[S 1382](#) was referred to the Judiciary and Rules Committee.

[SCR 120](#) was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator McGee, granted by unanimous consent, [SCR 121](#) was referred to the Transportation Committee.

February 22, 2010

The STATE AFFAIRS Committee reports out [S 1353](#) with the recommendation that it do pass.

MCKENZIE, Chairman

[S 1353](#) was filed for second reading.

February 22, 2010

The RESOURCES AND ENVIRONMENT Committee reports out [S 1342](#) and [SCR 118](#) with the recommendation that they do pass.

SCHROEDER, Chairman

[S 1342](#) was filed for second reading.

[SCR 118](#) was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 22, 2010

The JUDICIARY AND RULES Committee reports it has had under consideration the Gubernatorial appointments listed below and the Committee recommends that said appointments be confirmed by the Senate:

Anna Jane "Janie" Dressen to the Commission on Pardons and Parole, term to expire January 1, 2013.

Mike Matthews to the Commission on Pardons and Parole, term to expire January 1, 2013.

DARRINGTON, Chairman

The Gubernatorial appointments were referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

February 22, 2010

The JUDICIARY AND RULES Committee reports out [S 1370](#) with the recommendation that it do pass.

DARRINGTON, Chairman

[S 1370](#) was filed for second reading.

February 22, 2010

The EDUCATION Committee reports out [S 1365](#) with the recommendation that it do pass.

GOEDDE, Chairman

[S 1365](#) was filed for second reading.

February 22, 2010

The EDUCATION Committee reports out [S 1366](#) with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

GOEDDE, Chairman

There being no objection, [S 1366](#) was referred to the Fourteenth Order of Business, General Calendar.

February 23, 2010

The AGRICULTURAL AFFAIRS Committee reports out [S 1317](#) and [S 1331](#) with the recommendation that they do pass.

CORDER, Chairman

[S 1317](#) and [S 1331](#) were filed for second reading.

February 23, 2010

The STATE AFFAIRS Committee reports it has had under consideration the Gubernatorial appointment listed below and the

Committee recommends that said appointment be confirmed by the Senate:

Harold W. Davis to the State Building Authority, term to expire January 1, 2013.

MCKENZIE, Chairman

The Gubernatorial appointment was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

February 22, 2010

Dear Mr. President:

I transmit herewith [H 463](#), [H 488](#), [H 486](#), [H 491](#), [H 493](#), [H 498](#), and [H 490](#), which have passed the House.

ALEXANDER, Chief Clerk

[H 463](#), [H 488](#), [H 486](#), [H 491](#), [H 493](#), [H 498](#), and [H 490](#) were filed for first reading.

February 22, 2010

Dear Mr. President:

I return herewith [S 1253](#), [S 1254](#), and [S 1255](#), which have passed the House.

ALEXANDER, Chief Clerk

[S 1253](#), [S 1254](#), and [S 1255](#) were referred to the Judiciary and Rules Committee for enrolling.

February 22, 2010

Dear Mr. President:

I transmit herewith Enrolled [H 412](#), [H 437](#), and [H 413](#) for the signature of the President.

ALEXANDER, Chief Clerk

The President Pro Tempore signed Enrolled [H 412](#), [H 437](#), and [H 413](#) and ordered them returned to the House.

February 22, 2010

Dear Mr. President:

I return herewith Enrolled [S 1294](#), which has been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled [S 1294](#) was referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President Pro Tempore announced that the Commerce and Human Resources Committee report relative to the Gubernatorial appointment of John T. Cowden was before the Senate for final consideration, the question being, "Shall the report be adopted?"

On motion by Senator Lodge, seconded by Senator Malepeai, the Gubernatorial appointment of John T. Cowden as a member of the Idaho Personnel Commission was confirmed by voice vote.

The President Pro Tempore declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading, and Reference of Bills,
House Petitions, Resolutions, and Memorials**

S 1383

**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO THE SUSPENSION OF JUDGMENT AND SENTENCE; AMENDING SECTION 19-2601, IDAHO CODE, TO EXTEND THE PERIOD OF TIME THE COURT RETAINS JURISDICTION OVER A PRISONER AND TO PROVIDE THAT THE STATE BOARD OF CORRECTION SHALL BE RESPONSIBLE FOR DETERMINING THE APPROPRIATE PLACEMENT, EDUCATION, PROGRAMMING AND TREATMENT OF PRISONERS DURING THE PERIOD OF RETAINED JURISDICTION.

S 1384

**BY JUDICIARY AND RULES COMMITTEE
AN ACT**

RELATING TO THE STATE PENITENTIARY; AMENDING SECTION 20-111, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE JUSTIFIABLE KILLING OR WOUNDING OF A PRISONER IN A STATE PENITENTIARY OR IN CERTAIN PRIVATE PRISON FACILITIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 20-209B, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE DUTIES OF THE STATE DIRECTOR OF CORRECTION IN PRIVATE PRISON FACILITIES AND TO CORRECT A CODIFIER'S ERROR; AND AMENDING SECTION 20-241A, IDAHO CODE, TO PROVIDE THAT CERTAIN CONTRACTS BETWEEN THE STATE BOARD OF CORRECTION AND A PRIVATE PRISON CONTRACTOR SHALL CONTAIN CERTAIN TERMS AND TO REVISE PROVISIONS RELATING TO THE POWERS AND RESPONSIBILITIES OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF CORRECTION WHEN ACTING AS THE CHIEF CONTRACT MONITOR OF THE PRIVATE PRISON CONTRACT AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

[S 1383](#) and [S 1384](#) were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

[H 463](#), by Resources and Conservation Committee, was introduced, read the first time at length, and referred to the Resources and Environment Committee.

[H 488](#), by Revenue and Taxation Committee, was introduced, read the first time at length, and referred to the Local Government and Taxation Committee.

[H 486](#), by Transportation and Defense Committee, was introduced, read the first time at length, and referred to the Transportation Committee.

[H 491](#), by State Affairs Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

[H 493](#), by Education Committee, was introduced, read the first time at length, and referred to the Education Committee.

[H 498](#), by Judiciary, Rules, and Administration Committee, was introduced, read the first time at length, and referred to the Judiciary and Rules Committee.

[H 490](#), by Revenue and Taxation Committee, was introduced, read the first time at length, and referred to the Local Government and Taxation Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

[S 1322](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Davis arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Stennett (Stennett), Werk, Winder. Total - 35.

Whereupon the President Pro Tempore declared [S 1322](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1329](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Jorgenson arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Stennett (Stennett), Werk, Winder. Total - 35.

Whereupon the President Pro Tempore declared [S 1329](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1247](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Cameron arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Stennett (Stennett), Werk, Winder. Total - 34.

NAYS–Davis. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared [S 1247](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1316](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Corder arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES–Andreason, Bair, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Werk, Winder. Total - 32.

NAYS–Bilyeu, LeFavour, Stennett (Stennett). Total - 3.

Total - 35.

Whereupon the President Pro Tempore declared [S 1316](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1332](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Corder arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES–Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Kelly, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Stennett (Stennett), Werk, Winder. Total - 35.

Whereupon the President Pro Tempore declared [S 1332](#) passed, title was approved, and the bill ordered transmitted to the House.

[S 1325](#) was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Bair arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES–Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Coiner, Corder, Darrington, Davis, Fulcher, Geddes, Goedde, Hammond, Heinrich, Hill, Jorgenson, Keough, LeFavour, Lodge, Malepeai, McGee, McKague, McKenzie, Mortimer, Pearce, Schroeder, Siddoway, Smyser, Stegner, Stennett (Stennett), Winder. Total - 33.

NAYS–Kelly. Total - 1.

Absent and excused–Werk. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared [S 1325](#) passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Kelly, by voice vote, the Senate adjourned at 12:10 p.m. until the hour of 10:30 a.m., Wednesday, February 24, 2010.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary